HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1258 (S/S) year 2003

Shakti Sharma

Versus

State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 21.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1258 of 2003 (S/S)

Shakti Sharma ….Petitioner

Vs.

State of Uttaranchal
And others ….Respondents

Narayan Singh Negi (Adv.) cousel for the petitioner

Dated :- 21-10-2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the following reliefs: -

(A) Issue a writ, order or direction in the nature of mandamus directing the respondents to issue appointment letter to the petitioner for the post of Assistant Teacher L.T Grade in Hindi.

(B) Issue a writ, order or direction in the nature of mandamus directing the respondent to issue the appointment letter to the petitioner according to the rules 15 (2) as well as on the basis of quality points marks specified in Appendix 'D' to the U.P Subordinate Educational (Trained Graduate Grade) Service Rules 1983.

Brief facts giving rise to the present writ petition are that an advertisement was published on 24-6-2002 by the joint Director of Education Pauri Garhwal in the daily new paper for selection /appointment of Assistant Teachers in L.T Grade in various subjects for various higher Secondary Schools and Intermediate Colleges. The petitioner in pursuance of the advertisement applied within time and the final examination was also completed.

The petitioner has appeared in the B.Ed examination from University of Kashmir Srinagar and the examination was held from 7-5-2002 and was completed on 6-6-2002. The result of the B.Ed. examination was declared on 29-9-20002.

As well appear from the conditions mentioned in the advertisement that the petitioner was required to submit the result of the examination within 3 days from the declaration of the result. The conditions imposed in the advertisement day 24 June 2002 is mentioned below:-

आवेदन पत्र स्वीकार किये जाने की अन्तिम तिथि को आवेदक के पास अनिवार्य आर्हता होनी आवश्यक है। वे अभ्यार्थी जिनकी फाईनल परीक्षा विज्ञापन से पूर्व ही सम्पन्न हो चुकी है। तथा परीक्षा परिणाम प्राप्त न हुआ हो वे अपने अंक तालिका परीक्षा परिणाम घोषित होने के तीन दिन के भीतर ही निश्चित रूप से कार्यालय में प्रस्तुत करेंगें। अन्यथा की स्थिति में सम्बन्धित योग्यता को सम्मिलित नही किया जायेगा।

In paragraph 5 of the writ petition the petitioner has stated that soon after the issue of the marksheet on 29-9-2002 in respect of the B.Ed examination, the petitioner has submitted the same in the office of Joint Director of Education Garhwal Mandal Parui on 1-October-2002. The relevant fact to that fact is quoted below:-

“That the result of B.Ed examination of the petitioner was declared on 29-9-2002 and on the same date i.e. 29-9-2002 the

marksheet was also issued to the petitioner. In the B.Ed examination the petitioner declared successful/passed. After obtaining the marksheet of B.Ed examination held in May/June/2002 the petitioner immediately submitted the marksheet of B.Ed. Examination in the office of Joint Director of Education Garhwal Mandal Pauri respondent No.2 on 1-10-2002."

The petitioner has given his marks in paragraph 8 of the writ petition the same is quoted below: -

"That according to the marks obtained by the petitioner he has got 5-96 marks in High School 9.64 in Intermediate and 21.88 in B.A. 15.0 marks in M.A. 18 Marks in B.Ed . examination . According to the aforesaid Apppendix 'D' the petitioner got 70.48 quality points marks."

The selection of the L.T Grade Teacher known as Assistant Master is contained under the U.P. Subordinate Education (Trained Graduate Grade) Service Rules 1983.

The petitioner has also annexed the Appendix 'D' relating to sub class 2 of rule 15 which provides that the Regional Deputy Director of Education shall scrutinise the application and shall prepare the list of candidates to be prepared on the basis of quality point specified in Appendix 'D'. Appendix 'D' framed under sub clause 2 of rule 15 is quoted below:-

APPENDIX

(SEE RULE 15 (2))

Quality points for selection by direct recruitment

Name of Examination	Quality Points
1. High School	The percentage of marks 10
2. Intermediate	The percentage of mars*2 10

3. Graduate Degree			The percentage of marks *4
			10
B. Others			
4. Training	Ist Division	II Division	III Division
(a) Theory	1263		
(b) Pratical	1263		
5. Post Graduate Degree	15105		

Sub-class 3 provides that there shall be a selection Committee for the Selection of candidate for the appointment by direct recruitment consisting of appointment authority. Regional Deputy Direction of Education and the Regional Culture of Education. Sub-class 3 is quoted below:-

"Procedure for direct recruitment –(1) (a) The Regional Deputy Director of Education concerned shall in respect of the vacancies of both braches (Men's and Woman's Branch) to be filled by direct recruitment, advertise the vacancies subject-wise, along with the number of vacancies to be reserved for the candidates belong with to the Scheduled Castes, Scheduled Tribes and other categories of persons in at least two leading news papers one having wide circulation in the region and the other in the State, and invite applications for direct recruitment in the proforma given in Appendix 'C' . Such advertisement shall, inter alia, mentioned the pay and allowances relating to the posts, minimum academic qualifications for appointment thereto and such other information as may be considered necessary."

" The Regional Deputy Director of Education shall scrutinize the application and shall cause of lists of candidates to be prepared on the basis of quality points specified in Appendix 'D'. The Regional

Deputy Director of Education shall place the lists along with the applications before the Selection Committee."

" There shall be a Selection Committee for selection of candidates for appointment by direct recruitment comprising;-

(i) Appointing Authority;

(ii) The Regional Deputy Director of Education or the Regional inspectors of Girls Schools who is not appointing authority.

(iii) Regional Assistant Director of Education (Basic).

Counsel for the petitioner has stated that the petitioner has passed High School, Intermediate, B.A, M.A. and B.Ed as 70.48 as quality points and was higher in merit. The relevant paragraph to that effect is quoted in paragraph 11 of the writ petition . The Same is quoted below:-

"That quality points awarded to the petitioner for High School, Intermediate, B.A, M.A and B.Ed are as per Appendis 'D' fo the rules 70.48 as per rules, so far the respondent No.3 is concerned he has been awarded 61-5 quality points marks. But the respondent No. 3 who got lower quality points marks has been appointed by the respondents and the petitioner who got 70.48 quality points marks and was higher in merit then the respondent No.3 should have been given the appointment but Joint Director of Education respondent No.2 has not touched this aspect."

Shri B.D. Kandpal appearing on behalf of the Standing Counsel has submitted that since the petitioner has not submitted any evidence to the effect as to when he has submitted his result of B.Ed examination, it is not possible to scrutinize as to whether what has transpired to the selection committee not to select the petitioner.

The petitioner has stated in paragraph 5 of the writ petition that he has submitted his result of the examination on 1-October-2002. He

has also made a representation on 9-7-2003 stating therein that he has qualified at 70.48 points quality points and as such he was entitled to be considered for the post of Assistant Teacher as per advertisement dated 24-6-2002.

Since the petitioner has already made a representation in this regard it will be open to the Joint Director of Education to consider as to whether the petitioner was entitled to be considered for the post of Assistant Teacher as per Advertisement dated 24June 2002.

The petitioner has referred the judgment of Dr. M.S. Mudhol and another Vs. S.D. Halegkar and others 1993(3) SCC 591. The observations of the Apex Court are quoted below:-

"Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd iniquitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

If the petitioner is covered under the Zone of consideration as per condition No.2 mentioned in the advertisement dated 24 June

By the reasoned order after taking into consideration as to whether the petitioner is qualified for the appointment of Assistant Teacher in accordance with the U.P. Subordinate Educational (Trained Graduate Grade) Services Rules 1983. The respondents are directed to consider the same within a period of 3 weeks after obtaining the copy of the order.

With the aforesaid observations the writ petition is disposed of.

There will be no orders as to costs.

(Rajesh Tandon, J.)

21-10-2003

Mohit